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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/802,322	03/16/2004	Billy H. Brenton	BRER.01US01	3739
7590 08/11/2004				
Cochran Freund & Young LLC				
Suite 230				
3555 Stanford Road				
Fort Collins, CO 80525				
		EXAMINER		
		PAYER, HWEI SIU CHOU		
		ART UNIT		
		PAPER NUMBER		
		3724		

DATE MAILED: 08/11/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/802,322

Applicant(s)

BRENTON, BILLY H.

Examiner

Hwei-Siu C. Payer

Art Unit

3724

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4 and 6-17 is/are rejected.
- 7) ☒ Claim(s) 5 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 16 March 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

## Detailed Action

### Drawings objection

The drawings are objected to because:

(1) In Fig.5, reference numeral "46" (the one to the left of "52") should read --50-- (note Fig.4).

(2) In Fig.5, reference numeral "52" (the one to the right of "46") should read --48-- (see Fig.4).

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will

be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### **Claims Objection**

Claims 3 and 13 are objected to because of the following informalities: In claims 3 and 13, "said ring-shaped thumb ringlet" should read --said adjustable thumb ringlet--.

Appropriate correction is required.

### **Claims Rejection - 35 U.S.C. 112, second paragraph**

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 8, 9, 16 and 17 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

(1) In claims 8 and 16, "a finger ringlet disposed on the first shaft" is incorrect. As disclosed, the finger ringlet 20 and the adjustable thumb ringlet 32 are disposed on their respective one of shafts. Specifically, as shown in Fig.1, the finger ringlet 20 is disposed on shaft 12 while the thumb ringlet 32 is disposed on shaft 24. The invention as now claimed requires the finger ringlet 20 and the thumb ringlet 32 disposed on the same shaft (i.e. the first shaft).

(2) In claims 9 and 17, "a finger stabilizer disposed on the first shaft" is incorrect. As disclosed, the finger stabilizer 38 and the adjustable thumb ringlet 32 are disposed on their respective one of shafts. Specifically, as shown in Fig.1, the finger stabilizer 38 is disposed on shaft 12 while the thumb ringlet 32 is disposed on shaft 24. The invention as now claimed requires the finger stabilizer 38 and the thumb ringlet 32 disposed on the same shaft (i.e. the first shaft).

#### **Claims Rejection - 35 U.S.C. 102(b)**

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

2. Claims 1, 3, 4, 6-11 and 13-17 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Pracht (U.S. Patent No. 5,109,608).

Pracht discloses a pair of scissors comprising a first shaft having a handle portion (17) and a cutting portion (14) separated by a first pivot location; a circular adjustable thumb ringlet (15) having a hole (for receiving the end 20 of the pin 21, see Fig.6) and an open portion (i.e. the opening for receiving a thumb of a user); means in the form of a pin (21) for rotatably connecting the thumb ringlet (15) to the first shaft; a second shaft having a handle portion (12) and a cutting portion (11) separated by a second pivot location; and means (16) for pivotably connecting the second shaft to the first shaft in the region of the first pivot location and the second pivot location in such a

manner that the cutting portion (14) of the first shaft and the cutting portion (11) of the second shaft cooperate as opposing cutting portions of the scissors, a finger ringlet (13) disposed on the first shaft and a finger stabilizer (24) disposed on the second shaft in the vicinity of the finger ringlet (13) as claimed.

Pracht's pin (21) is considered "flexible" as claimed, since virtually anything will flex if enough pressure is applied to it. Fredman v. Harris-Hub Co., Inc. (DC NIII) 163 USPQ 397. To some extent, Pracht's thumb ringlet (15) is considered being "deformable" if enough pressure is applied to it.

Pracht's means for pivotably connecting the two shafts is in the form of a screw (16) and is capable of adjusting the force between the opposing cutting portions (11,14) as claimed by tightening or loosening the screw.

### **Claims Rejection - 35 U.S.C. 103(a)**

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 2 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pracht (U.S. Patent No. 5,109,608).

Pracht's pair of scissors as set forth shows all the claimed structure except it is silent about the material the pin (21) is made of.

However, the claimed plastic pin is not patentably distinct of Pracht's, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. In re Leshin, 125 USPQ 416.

#### **Indication of Allowable Subject Matter**

Claim 5 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

#### **Prior Art Citations**

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Megna, Megna et al., '249 and '551, Gauvry '895 and '617, Taberlet, Brenton et al, Chang and Knoop are cited as art of interest.

#### **Point of Contact**

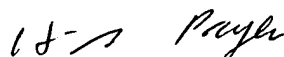
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hwei-Siu C. Payer whose telephone number is 703-308-

1405. The examiner can normally be reached on Monday through Friday, 7:00 am to 4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Allan N. Shoap can be reached on 703-308-1082. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9306 for official communications and 703-746-3293 for proposed amendments.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1148.

H Payer  
August 8, 2004



Hwei-Siu Payer  
Primary Examiner